



SPONSOR: Rep. M. Smith & Rep. Longhurst & Sen. Henry &
Sen. Lopez
Reps. Heffernan, Jaques, Keeley, Osienski, Ramone,
Wilson; Sens. Marshall, Pettyjohn, Townsend

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 182

AN ACT TO AMEND TITLES 16 AND 29 OF THE DELAWARE CODE RELATING TO RESPONSES TO CHILD ABUSE AND NEGLECT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 931, Title 16 of the Delaware Code by making deletions as shown by strikethrough and
2 insertions as shown by underline as follows:

3 § 931. The Child Protection Accountability Commission.

4 (b) The Commission is designated as a "citizen review panel" as required under the federal Child Abuse
5 Prevention and Treatment Act, 42 U.S.C. § 5106a(c) and the "State task force" as required under the federal Children's
6 Justice Act, 42 U.S.C. § 5106c(c). The Commission may delegate tasks to its committees, workgroups, and panels as
7 necessary to accomplish its duties. The Commission's purpose is to monitor Delaware's child protection system to best
8 ensure the health, safety, and well-being of Delaware's abused, neglected, and dependent children. To that end, the
9 Commission shall meet on a quarterly basis and shall:

10 (7) Investigate and review deaths or near deaths of abused or neglected children-solely for the purposes
11 provided in § 932 of this title.

12 (9) Meet annually with the Child Death Review Commission to jointly discuss any findings or
13 recommendations released to the public ~~recommendations generated~~ from reviews conducted under § 932 of this title.
14 This meeting shall be open to the public.

15 (10) Adopt rules or regulations for the administration of its duties or this subchapter, as it deems necessary.

16 (c) The Child Advocate shall serve as the Executive Director of the Commission, and the Office of the Child
17 Advocate shall provide staff support to the Commission. The Office of the Child Advocate shall assist the Commission in
18 investigating and reviewing the deaths or near deaths of abused or neglected children under § 932 of this title, in addition to
19 performing any other duties assigned by the Commission. The Child Advocate shall hire employees or contract for services
20 as necessary to assist the Commission in performing its duties under this subchapter, within the limitations of funds
21 appropriated by the General Assembly or obtained from other sources.

Section 2. Amend § 932, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 932. Investigation and review of the death or near death of an abused or neglected child.

(a) The Attorney General, the Department of Services for Children, Youth and Their Families, and any other state or local agency with responsibility for investigating child deaths shall report to the Commission any death or near death of a child who is determined to have been abused or neglected within 14 days of that determination. ~~Within 6 months of any such report to the Commission, the Commission shall conclude an investigation and review of the facts and circumstances of the death or near death incident. For good cause shown to the Commission, the 6-month period for the completion of an investigation and review under this subsection may be extended from 6 to 9 months. If the need for an extension under this subsection is attributable to an ongoing criminal prosecution, the extension may be for a period of up to 6 months following the completion of the prosecution. In cases in which the time for the Commission's complete investigation and review is extended under this subsection, the Commission shall issue initial recommendations if it determines that such are necessary under the circumstances.~~

(b) The Commission Chair shall appoint a committee to review all investigations under this section and a panel to conduct the investigations under this section. The members of such committee and panel, together with any staff, contractors, or volunteers designated to assist the committee and panel are considered agents of the Commission under § 935 of this Title.

(c) Within 6 months of any report to the Commission under subsection (a) of this section, the Commission shall conclude an investigation and review of the facts and circumstances of the death or near death incident through the committee and panel appointed under subsection (b) of this section. For good cause shown to the Commission, the 6-month period for the completion of an investigation and review under this subsection may be extended to 9 months. If the need for an extension under this subsection is attributable to an ongoing criminal prosecution, an initial review must occur, but a final review of the case may be deferred for a period of up to 6 months following the completion of the prosecution. In cases in which the time for the Commission's complete investigation and review is extended under this subsection, the Commission may issue initial findings or recommendations if it determines that such are necessary under the circumstances.

~~(b)~~(d) No person identified by the Attorney General's office as a potential witness in any criminal prosecution arising from the death or near death of an abused or neglected child shall be questioned, deposed, or interviewed by or for the Commission in connection with its investigation and review of such death or near death until the completion of the prosecution.

(e)(e) Notwithstanding any requirement of § 931(b) of this title to the contrary, the Commission shall, if necessary, make system-wide findings or recommendations arising from an investigation and review conducted under this section.

(1) The Commission shall provide ~~these~~ its findings or recommendations, if any, to the Governor, the General Assembly, and the public within 20 days of the approval of the findings or recommendations made under this section.

(2) All summary information, findings, or recommendations released ~~made~~ by the Commission under this subsection shall comply with applicable state and federal confidentiality provisions, including those set forth in § 934 of this title and § 9017(e) of Title 29.

(3) Notwithstanding any provision of this subchapter to the contrary, no summary information, finding, or recommendation ~~made~~ released by the Commission under this subsection shall specifically identify any individual or nongovernmental agency, organization, or entity.

(4) In addition to the Commission's release of findings or recommendations, the Commission ~~shall~~ may release to the public summary information and findings resulting from reviews of child deaths and near deaths due to abuse and neglect ~~as required by 42 U.S.C. § 5106a(b)(2)(B).~~ The Commission may release summary information ~~and findings only upon completion of the prosecution; and only if such release complies with paragraph (e)(2) of this section.~~ Such release to the public of summary information does not supplant the obligation of the State to comply with any request for public disclosure of information on child deaths and near deaths due to abuse or neglect made under 42 U.S.C. § 5106a(b).

~~(d)(f)~~ Notwithstanding this section or § 931(b)(7) of this title, the Child Death Review Commission may review deaths of abused or neglected children, for good cause shown, as determined by the agreement of the Commission and the Child Death Review Commission.

~~(e)(g)~~ For purposes of this subsection, "completion of the prosecution" means the decision to file no information or seek no indictment, conviction or adjudication, acquittal, dismissal of an information or indictment by a court, the conditional dismissal under a program established by Delaware law or a court, or the nolle prosequi of an information or indictment by the Attorney General.

Section 3. Amend § 933, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 933. Power and authority of investigations and reviews.

(a) In connection with any investigation and review conducted under § 931(b)(7) of this title, the Commission, by and through its staff, committee, and panel, has power and authority to do all of the following:

(1) Administer oaths and affirmations to any person related to the death or near death under review.

(2) Issue subpoenas to compel the attendance of witnesses whose testimony is related to the death or near death under review.

(3) Issue subpoenas to compel the production of records related to the death or near death under review.

Section 4. Amend § 934, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 934. Confidentiality of records related to investigations and reviews.

(a) The records of the Commission, committee, panel, and its staff, contractors and volunteers, including original documents and documents produced in the investigation and review process with regard to the facts and circumstances of each death or near death, ~~shall be~~ confidential and ~~shall~~ may not be released to any person except as expressly provided by this subchapter. Such records ~~shall~~ may be used by the Commission, committee, panel, and its staff, contractors and volunteers only in the exercise of the proper functions of the Commission and its staff, ~~and shall~~ Such records, together with the summary information, findings, and recommendations therefrom are not be public records, and shall are not be available for Court subpoena or subject to discovery, are not admissible into evidence or otherwise in any civil, criminal, administrative, or judicial proceeding, and are not considered binding under claim or issue preclusion doctrines. Except where constitutional provisions require otherwise, statements, records, or information ~~shall not be~~ not subject to any statute or rule that would require those statements, records, or information to be disclosed in the course of a civil, criminal, or administrative trial, or associated discovery. Aggregate statistical data compiled by the Commission or its staff, however, may be released at the discretion of the Commission or its staff.

(b) No person in attendance at a meeting of the Commission, or any of its committees or panels, ~~shall be~~ is required to testify as to what transpired at ~~a such~~ meeting in any forum including any civil, criminal, administrative, or judicial proceeding.

Section 5. Amend § 935, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 935. Immunity from suit related to investigations and reviews.

(a) Members of the Commission and their agents or employees, including committee and panel members, contractors, and volunteers ~~shall not be~~ not subject to, and ~~shall be~~ are immune from, claims, suits, liability, damages, or any other recourse, civil or criminal, arising from or relating to any act, omission, proceeding, decision, determination, finding, or recommendation made in the performance of their duties under § 932 and § 933 of this title. For the immunity provided by this subsection to apply, the members of the Commission or their agents or employees must have acted in good faith and without malice in carrying out the responsibilities, authority, duties, powers, and privileges of the offices

conferred upon them by this subchapter or by any other provisions of the Delaware law, federal law or regulations, or duly adopted rules and regulations of the Commission. Complainants shall bear the burden of proving malice or a lack of good faith to defeat the immunity provided by this subsection.

Section 6. Amend § 9005A, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 9005A. Duties of the Child Advocate [Effective Mar. 5, 2017]

The Child Advocate shall perform the following duties:

(13) Provide staff support to the Commission, including assisting the Commission, its committees, and panels in investigating and reviewing the deaths or near deaths of abused or neglected children.

(14) Hire employees or contract for services as necessary to assist the Commission, its committees, and panels in investigating and reviewing the deaths or near deaths of abused or neglected children and performing its other duties under subchapter III, Chapter 9 of Title 16, within the limitations of funds appropriated by the General Assembly or obtained from other sources.

Section 7. Amend § 9006A, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 9006A. Confidentiality [Effective Mar. 5, 2017]

(4) All information and records received, prepared, or maintained by the Office pertaining to the investigation and review of child abuse or neglect deaths or near deaths are confidential as set forth in § 934 of Title 16. All information and records received, prepared, or maintained pertaining to these duties may not be used to perform any other duties of the Office unless otherwise permitted by law.

SYNOPSIS

This bill clarifies that the reviews of child abuse and neglect deaths and near deaths are confidential and should not be used in any proceedings. It ensures that the committees and panels who do the work on behalf of the Child Protection Accountability Commission are protected. Finally, the bill clarifies that any duties of the State for public disclosure in these cases under the federal Child Abuse Prevention and Treatment Act will not be fulfilled by these confidential reviews conducted by the Commission as Delaware's Citizen Review Panel.